112—87

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. ~~307~~ 28

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

BENJAMIN F. FLANDERS, JOHN S. WHITAKER, AND JOHN Q. A. FELLOWS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED SEPTEMBER 24, 1881.

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a UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and eastern district of Louisiana.

UNITED STATES, PLAINTIFF IN ERROR,
vs.
GEORGE S. DENISON ET ALS., DEFENDANTS IN error. } No. 7927.

A. H. Leonard, U. S. attorney, for plaintiff in error.
Wm. R. Whitaker and J. Q. A. Fellows, esq's, for defendants in error.

Writ of error returnable to the Supreme Court of the United States on the second Monday of October, A. D. 1881.

1 *Petition.—Filed July 22d*, 1876.

UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and eastern district of Louisiana.

UNITED STATES
vs.
GEORGE S. DENISON ET ALS. } No. 7927.

To the hon. the circuit court of the United States for the fifth circuit and district of Louisiana:

The petition of the United States with respect shows that George S. Denison, Thomas Cottman, Benjamin F. Flanders, John S. Whitaker, John Q. A. Fellows, Elizé E. Malhiot, and William H. Higgins, of the district of Louisiana, are in solido indebted to them in the sum of four thousand three hundred and forty-six dollars and eighty-four cents and interest, as hereinafter claimed, for this, that at the city of New Orleans, Louisiana, on the 15th day of May, 1863, the said George S. Deni-
2 son, being collector of taxes under an act of Congress entitled "An act to provide internal revenue to support the Government and to pay interest on the public debt," approved 1st July, 1862, for the first collection district of Louisiana, duly appointed, did, as required by law, make, sign, and deliver to petitioners the bond, a copy whereof is hereto annexed as part of this petition, in favor of petitioners in the penal sum of one hundred thousand dollars, subject to the terms and conditions therein set forth, and the said Thomas Cottam, Benjamin F. Flanders, John S. Whitaker, John Q. A. Fellows, Elizé E. Malhiot, and William H. Higgins did sign the same as sureties for the faithful performance of the terms and conditions of said bond by the said George S. Denison. Petitioners aver that the said George S. Denison, collector as aforesaid, did wholly fail to comply with and perform the terms and conditions of the said bond, and particularly in this, that he did not truly and faithfully execute the duties of his said office according to law; that he did not justly and faith-
3 fully account for and pay over to the United States, in compliance with the orders and regulations of the Secretary of the Treasury,

all public moneys which came into his hands and possession as collector as aforesaid; that he failed to account for and pay over to the United States the aforesaid sum of forty-three hundred and forty-six $\frac{84}{100}$ dollars of public moneys which came into his hands and possession as collector as aforesaid, all which will in full detail of character, items, dates, and amounts appear by reference to the statement of the accounts of the said George S. Denison, marked A, hereto annexed as part of this petition, duly stated by the proper accounting officers of the Treasury of the United States, showing balance of $4,346.84 due by the said Denison as collector as aforesaid, to petitioners, all of which said sum is still unpaid.

Petitioners aver that by reason of the said breach of the conditions of the said bond the same became forfeited, and the liability of the obligors thereon became absolute. They further aver that the said bond was
4 duly approved by the Solicitor of the Treasury on *on* 20th July, 1863.

Petitioners pray that the said George S. Denison, Thomas Cottman, Benjamin F. Flanders, John S. Whitaker, John Q. A. Fellows, Elizé E. Malhiot, and William H. Higgins may be cited; that after due proceedings had the said bond be declared forfeited, and the said defendants be condemned in solido to pay to petitioners the said sum of four thousand three hundred and forty-six dollars and eighty-four cents, with six per cent. per annum interest thereon from 11th December, 1863, until paid, and costs of suit, and they pray for general relief.

(Signed) J. R. BECKWITH,
U. S. Att'y.

Copy of bond filed with petition, July 22 1876.

UNITED STATES OF AMERICA:

TREASURY DEPARTMENT,
Washington, D. C., June 17th, 1876.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed is a true copy of an original official bond of George S. Denison, late collector of internal revenue for the first collection district
5 of Louisiana, dated May 15th, A. D. 1863, on file in this Department.

In witness whereof I have hereunto set my hand and caused the seal of the Treasury Department to be affixed on the day and year first above written.

(Signed) B. H. BRISTOW,
Secretary of the Treasury.

Know all men by these presents that we, George S. Denison, Thomas Cottman, Benjamin F. Flanders, John S. Whitaker, John Q. A. Fellows, Elizé E. Malhiot, and William H. Higgins, are held and firmly bound unto the United States of America in the full and just sum of one hundred thousand dollars, money of the United States, to which payment well and truly to be made we bind ourselves, jointly and severally, our joint and several heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this fifteenth day of May, in the year one thousand eight hundred and sixty-three.

6 The condition of the foregoing obligation is such that whereas the President of the United States hath, pursuant to law, appointed the said George S. Denison collector of taxes, under an act entitled "An act to provide internal revenue to support the Government and to pay interest on the public debt:" Now, therefore, if the said George S. Denison has truly and faithfully executed and discharged, and shall continue truly and faithfully to execute and discharge, all the duties of the said office according to law, and shall justly and faithfully account for and pay over to the United States, in compliance with the orders and regulations of the Secretary of the Treasury, all public moneys which may come into his hands or possession, and if each and every deputy collector appointed by said collector has truly and faithfully executed and discharged, and shall continue truly and faithfully to execute and discharge, all the duties of such deputy collector according to law, then the above obligation to be void and of no effect; otherwise it shall abide and remain in full force and virtue.

7

GEORGE S. DENISON.	[SEAL.]
THOS. COTTMAN.	[SEAL.]
BENJ. F. FLANDERS.	[SEAL.]
J. S. WHITAKER.	[SEAL.]
JOHN Q. A. FELLOWS.	[SEAL.]
ELIZÉ A. MALHIOT.	[SEAL.]
WM. H. HIGGINS.	[SEAL.]

Sealed and delivered in the presence of—
AUG. D. B. HUGHES.
A. H. MURTAGH.

[20 ct. & 30 ct. int. rev. stamp, cancelled.]

I, George S. Denison, having been appointed to the office of collector of taxes under an act entitled "An act to provide internal revenue to support the Government and to pay interest on the public debt," do solemnly swear that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that I have neither sought nor *accepted* to exercise the functions of any office whatever under any authority or pretended authority in hostility to the United States; that I have not yielded a voluntary support to any pretended authority, power, or constitution within the United States hostile or inimical thereto.

8 And I do further swear that to the best of my knowledge and ability I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

GEORGE S. DENISON.

Sworn to and subscribed this 15' day of May, 1863, before me.
Witness my hand and seal.
[SEAL.]

AUG. D. B. HUGHES,
Cl'k U. S. Prov'l Court.

I, Charles A. Peabody, judge of the United States provisional court for La., do hereby certify that Augustus D. B. Hughes, who administered the above oath, was at the time of so doing duly authorized to administer the same, and that full faith and credit are due to his official attestations.

In testimony whereof I have hereto set my hand and affixed the
9 seal of said provisional court this 15th day of May, 1863.

[SEAL OF COURT.] CH. A. PEABODY.

I, Thomas Cottman, am worth twenty thousand dollars after paying all my just debts and liabilities.

THOS. COTTAM.

Witness:
A. H. MURTAGH.
HENRY MCINTIRE.

[5 cent int. rev. stamp, canceled.]

Sworn and subscribed to before me this 25' day of April, 1863.
(Signed) AUG. D. B. HUGHES,
Clk U. S. Prov'l Court.

I, Benj. F. Flanders, am worth ten thousand dollars after paying all my just debts and liabilities.

BENJ. F. FLANDERS.

Subscribed and sworn to before me this 4' day of May, 1863.
AUG. D. B. HUGHES,
Clk Prov'l Court.

[5 cent int. rev. stamp, cancelled.]

I, J. S. Whitaker, am worth five thousand dollars after paying all my just debts and liabilities.

J. S. WHITAKER.

Subscribed and sworn to before me this 5th day of May, 1863.
AUG. D. B. HUGHES,
10 *Clk U. S. Prov'l Court.*

[5 ct. int. rev. stamp, cancelled.]

I, J. Q. A. Fellows, am worth ten thousand dollars after paying all my just debts and liabilities.

J. Q. A. FELLOWS.

Sworn and subscribed to before me this 5' day of May, 1863.
AUG. D. B. HUGHES,
Clk U. S. Prov'l Court.

[5 cent int. rev. stamp, cancelled.]

I, E. E. Malhiot, am worth fifteen thousand dollars after paying all my just debts and liabilities.

E. E. MALHIOT.

Sworn and subscribed to before me this 7th day of May, 1863.
AUG. D. B. HUGHES,
Clk U. S. Prov'l Court.

[5c. int. rev. stamp, cancelled.]

I, W. H. Higgins, am worth forty-five thousand dollars after paying all my just debts and liabilities.

WM. H. HIGGINS.

Sworn to before me this 14' day of May, 1863.

AUG. D. B. HUGHES,
Cl'k U. S. Prov'l Court.

[5 ct. int. rev. stamp, cancelled.]

11 I, Augustus D. B. Hughes, cl'k of the United States provisional court for the State of Louisiana, holding its sessions in the parish of Orleans and city of New Orleans and State of Louisiana, do hereby certify that the sureties whose names are affixed to the foregoing bond or obligation are sufficient to pay the penalty thereof.

In witness whereof I have hereunto set my hand and affixed the seal of said court at the city of New Orleans, this 15th day of May, in the year 1863.

[SEAL OF COURT.] AUG. D. B. HUGHES, *Cl'k.*

I, Augustus D. B. Hughes, clerk of the United States provisional court for the State of Louisiana, holding its sessions in said State, parish of Orleans, and city of New Orleans, do hereby certify that I administered the oaths to each of the persons described in and who joined in the execution of within bond as sureties.

In witness whereof I have hereunto set my hand and seal of said
12 court this 15th day of May, 1863.

[SEAL OF COURT.] AUG. D. B. HUGHES, *Cl'k*

I, Charles A. Peabody, judge of the United States provisional court for the State of Louisiana, do hereby certify that Augustus D. B. Hughes above named, and who administered the oath to the several persons named as sureties in the foregoing bond was at the time of doing so, fully authorized to administer the same, and that full faith and credit are due to his official attestations.

In testimony whereof I have hereunto set my hand and affixed the seal of said provisional court this fifteenth day of May, 1863.

[SEAL OF COURT.] CH. A. PEABODY,
Solicitor.
Judge U. S. Prov'l Court for State of La.

TREASURY DEPARTMENT, SOLICITOR'S OFFICE,
July 20, 1863.

I have examined the within bond and find it to be executed in proper form, and I approve the sureties thereto as sufficient.

(Signed) EDWARD JORDAN,
Solicitor.

13 EXHIBIT A.—*Statement of Account..— Filed with petition July 22d,* 1876.

TREASURY DEPARTMENT,
Washington, D. C., July 7 1876.

Pursuant to section 886 of the Revised Statutes of the United States, I, John Allison, Register of the Treasury Department, do hereby certify

that the annexed copies of the reports of the Fifth Auditor of the Treasury numbered 201, 5324, 11112 as admitted and certified by the Comptroller upon the accounts of George S. Denison, collector of internal revenue for the first collection district of Louisiana, and the statement of differences thereon, are a transcript from the books and proceedings of the Treasury, and that the copy of the collector's account No. 1 and the copies of the receipts for tax lists (23½) hereto attached are true copies of the originals on file at this office.

JOHN ALLISON, *Register.*

Be it remembered that John Allison, esq., who certified the annexed transcript is now and was at the time of doing so Register
14 of the Treasury of the United States, and that full faith and credit are due to his official attestations.

In testimony whereof I, Lot M. Morrill, Secretary of the Treasury of the United States, have hereunto subscribed my name and caused to be affixed the seal of this Department at the city of Washington, this eighth day of July, A. D. 1876.

[SEAL.] (Signed) LOT. M. MORRILL,
Secretary of the Treasury.

15 Report No. 201.

TREASURY DEPARTMENT, FIFTH AUDITOR'S OFFICE,
April 24, 1865.

I hereby certify that I have examined and adjusted an account between the United States and Geo. S. Denison, late collector for the district of Louisiana, from May 15, 1863, to December 11, 1863, and find him chargeable as follows:

To amount of assessor's lists receipted for as per certificate of Commissioner and receipts in Comptroller's office		742,522 92	
U. S. moiety of fines, penalties, and forfeitures received as per record		910 15	
Am't of tax on salaries of employés in collector's office, remitted to cashier of int. rev		66 49	
Commissions divided in accord'ce with sec. 26, act of June 30, 1864:			
Whitaker's collections	$1,687,160 05		
Denison's "	577,791 28		
	2,264,951 33		
		$743,499 56	743,499 56
By amount of cash deposited as per certificate of Commissioner		570,515 81	
" am't paid ass't assessors, viz:			
Salaries	$7,047 93		
Tax	89 01		
Net	$6,958 92		
Stationery	40		
Tax, 3 per cent., withheld and forwarded with form No. 10	148 80		
		7,147 72	
" am't of drafts refunding taxes erroneously paid		36,193 56	
" am't of collector's stationery, &c., viz:			
Stationery, blanks, and blank-books		127 75	

" commissions, viz:			
Amount paid over and accounted for	$577,791 28		
Expenses of administering office:			
Deputies	$1,366 90		
Clerks	$2,385 32		
Miscel	620 34		
Adv's	803		
Total	$5,175 56		
Limit of compensation to collector		2,551 01	
Balance due the United States		126,963 71	
Totals		743,499 56	743,499 56

16 Balance due the United States, $26,963.71, as appears from statement and vouchers herewith transmitted for the decision of the Comptroller.

C. M. WALKER, *Auditor.*

COMPTROLLER'S OFFICE,
June 21, 1865.

I admit and certify that the above amount of one hundred and twenty-six thousand nine hundred and sixty-three $\frac{71}{100}$ dollars is due the United States as stated.

$126,963.71.] R. W. TAYLER,
Comptroller.

To the COMMISSIONER OF INTERNAL REVENUE.

NOTE.—Although this account covers the time from May 15, 1863, to June 30, 1863, yet during that period no moneys were paid over or accounted for by the collector, and therefore the account in fact covers only the period from July 1 to December 11, 1863.

17 *Statement of differences.*

To balance due the U. S. as per adjustment		126,963 71	
" " " " " " account		123,234 84	
Diff. to collector's debit			3,728 87
Thus explained:			
Am't of commissions claimed by collector	$7,500		
" " " allowed	2,551 01		
		4,948 99	
" " stationery, &c., claimed	907 25		
" " " " allowed	127 75		
		779 50	

Diff. caused as follows:

Bill of P. Durel, Mar. 25, '63, 1 map, $2.50; disallowed.
Bill for advertising, $777; disal'd; referred to expenses of office; total, $779.50.

Am't claimed as paid to ass't assessors	$7,099 12		
" allowed " " "	6,998 92		
		100 20	

Diff. caused as follows:

Am't of tax not deducted from salaries of ass't assessors, $670. The following charges by assistants for stationery, are suspended for bills of items to be furnished L. M. Torrey, April, 1863, $9.75; D. L. Mudge, $10; P. Harman, for May, $9; P. Deverges, $5.25; C. B. Briggs, $10; J. K. Parno, $5.60; W.

B. Collins, $18.50; W. R. Greathouse, $5.50; Thos. O. Conor, $6.25 for June; P. Deverges, $8.65 for July; H. Abel, $5. (93.50.) Total, $160.20.		
Am't of unass'ed penalties charged	910 15	
	6,738 84	
Deduct as follows:		
Am't of lists credited by collector	$745,532 89	
" " " charged " commissioner	742,522 92	
	3,009 97	
Diff. as above stated		3,728 87

NOTE.—Diff. in lists caused by amount of Mar., '63, list, $2,099.82; and unass'ed penalties, $910.15; being credited by coll'r in his account. The list for Mar. was receipted for by Whitaker, and will be charged to him in the next adjustment.

TREASURY DEPARTMENT, FIFTH AUDITOR'S OFFICE,
April 24, 1865.

Examined and stated by—

W. SOMMERS, *Clerk.*

COMPTROLLER'S OFFICE, *June* 21, 1865.
S. C. CLARKE.

18 *Supplemental report No. 5324.*

TREASURY DEPARTMENT,
FIFTH AUDITOR'S OFFICE,
December 17, 1870.

I hereby certify that I have examined and adjusted an account between the United States and George S. Denison, late collector for the 1st district of Louisiana, from 18 , to Dec. 11, 1863, and find him chargeable as follows:

(Under bond dated May 15, 1862.)

To balance from last adjustment report 5201	126,963 71	
Amount of assessor's lists receipted for as per certificate of Commissioner and receipts in Comtroller's office, form 23½, March, 1863	2,099 82	
" am't of draft No. 1476, Dec. 14, 1864, paid by W. R. Whitaker for bill of stationery incurred by Collector G. S. Denison	284 60	
		129,348 13
I also find him entitled to credit as follows:		
By amount collected by successor on lists transferred to him, C. Smith	393 14	
" am't of lists transferred to successor, W. R. Whitaker, per certif. of Commissioner	122,841 70	
" amount of draft No. 1476, Dec. 14, 1864, paid by W. R. Whittaker for bill of stationery incurred by Collector Denison	284 60	
By balance due the United States	5,828 69	
		129,348 13

As appears from accounts and vouchers herewith transmitted for the decision of the Comptroller thereon.

H. D. BARRON, *Auditor.*

To the FIRST COMPTROLLER OF THE TREASURY.

19

TREASURY DEPARTMENT,
COMPTROLLER'S OFFICE,
June 6th, 1871.

I admit and certify that a balance of five thousand eight hundred twenty-eight and $\frac{69}{100}$ dollars is due to the United States as stated in the above report.

$5,828.69.

WM. HEMPHILL JONES,
Acting Comptroller.

To the REGISTER OF THE TREASURY.

20 *Statement of differences.*

Explained thus:
Adjusted on final statement of the Commissioner of Internal Revenue.

FIFTH AUDITOR'S OFFICE,
Dec. 17, 1870.

Examined and stated by—

R. B. DETRICK.

COMPTROLLER'S OFFICE,
June 16, 1871.

Examined and reported by—

T. C. DICKINSON.

21 *Report No.* 11112.—*Supplemental for suit.*

TREASURY DEPARTMENT,
FIFTH AUDITOR'S OFFICE,
June 17, 1876.

I hereby certify that I have examined and adjusted an account between the United States and George S. Denison, late collector for the first district of Louisiana, from 187 , to December 11, 1863, and find him chargeable as follows:

(Under bond of May 15, 1863.)

To balance from last adjustment report #5324	5,828 69	
		$5,828 69
I also find him entitled to credit as follows:		
By amount of commissions, in addition to amount allowed per report #201. (See explanation next page)	749 25	
" amount disbursed for stationery and blank-books (bill of Peter O'Donnell, dated Dec. 31, 1863)	639 10	
" amount of stationery of ass't assessors suspended, per report No. 201	93 50	
By balance due the United States	4,346 84	
		5,828 69

As appears from account and vouchers herewith transmitted for the decision of the Comptroller thereon.

J. H. ELA, *Auditor.*

To the FIRST COMPTROLLER OF THE TREASURY.

TREASURY DEPARTMENT,
COMPTROLLER'S OFFICE,
June 29, 1876.

I admit and certify that a balance of four thousand three hundred forty-six and .84 dollars is due to the United States, as stated in the above report.

$4,346.84.

R. W. TAYLER, *Comptroller.*

To the REGISTER OF THE TREASURY.

22

Collector Denison's collections during fiscal year 1863		154,341 17
Year 1864		424,182 71
Collector Whitaker's collections during fiscal year 1864		1,687,160 05
Total collections during fiscal year 1864		2,111,342 76
Collector Denison's commissions for 47 days' service, viz, from May 15 to June 30 inst., 1863, at the rate of $10,000 per annum		$1,291 20

Computation of Collector Denison's commissions for the fiscal year 1864, under section 26, act of June 30, 1864, to wit:

As whole am't collected	$2,111,342 76	
Amount collected by Denison		$424,182 71
Smith, $10,000		2,009 06
Add Denison's coupons for 1863		1,291 20
		3,300 26
Deduct commis. allowed in report $201		2,251 01
Am't credited herein		749 25

23 *Statement of differences.*

Balance per account due to the United States		0,000 00
" found per adjustment due to the United States		4,346 84
Difference to collector's debit		4,346 84

Dr. explained thus:

1. Amount claimed per coll'r's acc't as commissions	$7,500 00	
" credited per adjustment as disbursements to ass't assessors	3,300 26	
		4,199 74

NOTE.—The limit of commissions for the year ($10,000) has been divided between Collector Denison and his successor in accordance with sec. 26, act of June 30, 1864. (See opposite page.)

2. Am't claimed per coll'r acc't as disbursements to ass't assessors	$7,099 12	
" credited per adjustment as disbursements to " ass't assessors	7,092 42	
		6 70

NOTE.—This difference arises from errors in computing the tax on various vouchers.

3. Am't claimed per coll's acc't as disbursed for stationery & advertising	907 25	
" credited per adjustment	766 85	
		140 40

Difference caused thus:			
Am't of bills for advertising disallowed for the reason that law did not provide for the payment of this expense prior to April 1, 1865	777 00		
Bill of P. Durel, Mar. 25, 1865, 1 map disal'd	2 50		
" " P. O'Donnell, Dec. 31, 1863, 1 office bell, 4.50; 3 Boutwell's manuals, $15; 1 cash box, $11.50; 1 hone, $2; 2 penholders, $2; 5 rubber pencils, $5.25, disallowed as unnecessary. Total	40 25		
	819 75		
Deduct:			
Am't of bill P. O'Donnell, Dec. 31, 1863, not claimed per coll'r's a/c	679 35		
	140 40		
4. " claimed per coll'r's a/c as taxes transferred to successor	125,234 84		
" credited per adjustment as taxes transferred to successor	122,841 70		
		393 14	
			4,739 98

NOTE.—The difference, $393.14, was collected by successor C. Smith.

Deduct:	
Am't credited per adjustment as collections by successor, C. Smith, on lists receipted by Collector Denison	393 14
Difference as above	4,346 84

FIFTH AUDITOR'S OFFICE, *June* 17, 1876.

Examined and stated by—

R. B. DETRICK.

COMPTROLLER'S OFFICE, *June* 29, 1876.

Examined and reported by—

WILLIAM E. SWEET.

24 *Collector's account No. 1. March to November 30, 1863. The United States (Office of Internal Revenue), in account with Geo. S. Denison, collector, district of Louisiana.*

Dr.				Cr.			
3	To a'mt of cash deposited, as per vouchers to the Comm'r of Internal Revenue		570,515 81	4	By am't of assessors' lis' receipted for, viz:		
4	" Comm'r. This am't paid for office expenses & retained on account of salary		7,500 00		Month of March, 1863	2,099 82	
5	" am't of stationery, blank-books, and advertising used in performance of off'l duties		907 25		" " April	35,427 20	
7	" am't of drafts of Comm'r of Internal Revenue acc't of erroneous assessments		36,193 56		" " May	64,722 39	
8	Net am't paid ass't assessors for their services and expenses	7,099 12			" " Annual	111,028 33	
	Add am't of 3 % tax withheld from salary of ass't assessors & forwarded to this office with Form No. 10	82 31			" " June	52,091 76	
			7,181 43		" " May	51,589 11	
14	Am't of uncollected taxes transferred to successor		123,234 84		" " June	23,249 39	
					" " July	18,258 46	
					" " August	29,071 99	
					" " September	82,480 61	
					" " October	101,806 44	
					" " ....do.... unass'd penalties	704 72	
					" " November	166,194 30	
					" " ....do.... unass'd penalties	910 15	
					" " June, additional	4,913 73	
					" " July	984 58	745,532 89
		Dollars....	745,532 89			Dollars....	745,532 89

Dated at New Orleans this 20th day of May, 1864.

WM. R. WHITAKER,
Late Dep'ty Collector, District of Louisiana.

25 *Aggregate list of taxes assessed and returned to collector to be forwarded by the assessor to the First Comptroller of the Treasury, Washington, D. C.*

I, William H. Higgins, assessor for the collection district of the State of Louisiana, hereby certify that I have on the following days delivered to George S. Denison, collector for the same district, a detailed list of taxes assessed within said district, and dated at New Orleans:

On April 30th,	1863,	the	sum	of.....	$35,427 20
" May 30,	1863,	"	"	"	64,722 39
" June 30,	1863,	"	"	"	52,091 76
" Nov'r 30,	1863,	"	"	"	51,589 11
" Nov'r 30,	1863,	"	"	"	4,913 73
" Nov'r 30,	1863,	"	"	"	23,249 39
" Nov'r 30,	1863,	"	"	"	18,258 46
" Nov'r 30,	1863,	"	"	"	29,071 90
" Nov'r 30,	1863,	"	"	"	82,480 61
" Nov'r 30,	1863,	"	"	"	101,806 44
" Nov'r 30,	1863,	"	"	"	984 58

(Signed) WM. H. HIGGINS,
Assessor, District of Louisiana.

I hereby acknowledge the receipt at New Orleans, from William H. Higgins, assessor for the district of Louisiana, lists as above described on the dates and in the amounts following, viz:

On April	30,	1863,	the	sum	of.....
" May	30,	1863,			.....
" June	30,	1863,			.....
" Nov'r	30,	1863,			.....
" Nov'r	30,	1863,			.....
" Nov'r	30,	1863,			.....
" Nov'r	30,	1863,			.....
" Nov'r	30,	1863,			.....
" Nov'r	30,	1863,			.....
" Nov'r	30,	1863,			.....
" Nov'r	30,	1863,			.....

$35,427 20
64,722 39
52,091 76
51,589 11
4,913 73
23,249 39
18,258 46
29,071 90
82,480 61
101,806 44
984 58

(Signed) G. S. DENISON,
Collector, District of Louisiana.

26 *Citations.—Issued July 27th, 1876.*

The President of the United States to the marshal of the district of Louisiana, greeting:

UNITED STATES
vs.
GEORGE S. DENISON ET AL. } No. 7927.

You are hereby commanded to summon Benjamin F. Flanders, John S. Whitaker, and John Q. A. Fellows to comply with the demand of the United States contained in the petition, of which a copy accompanies this

citation, or to deliver his answer to the same in the office of the clerk of the circuit court of the United States, fifth judicial circuit and district of Louisiana, in the city of New Orleans, in ten days after service hereof, or judgment will be rendered against him by default; which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held. And that you make due return hereof on the first Monday of September, 1876.

27 Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 22d day of July, A. D. 1876, & of the Independence of the United States of America the 101st year.

[SEAL.] (Signed) F. B. VINOT, *D'y Clk.*

Marshal's return.

Received July 27, 1876, by the U. S. marshal, and on the 1st day of August of same year, and 31st day of July of same year, and 4th day of August of same year served copies of the within citations and accompanying petitions on each of the within-named defendants by handing the same to them in person.

New Orleans, Aug. 7th, 1876.

(Signed) S. B. PACKARD, *Marshal.*
By S. W. REED,
D'y U. S. Marshal.

28 *Answer of B. F. Flanders, J. S. Whitaker, and J. Q. A. Fellows.—Filed Nov. 28, 1876.*

United States circuit court, fifth circuit and district of Louisiana.

THE UNITED STATES
vs.
GEORGE S. DENISON ET AL. } No. 7927.

And now into court come Benj. F. Flanders and John S. Whitaker, herein represented by their attorney; William R. Whitaker and John Q. A. Fellows in propria persona, made defendants herein, and reserving their right to further answer herein with respect present their answer to the petition of plaintiff.

They severally deny all the allegations of plaintiffs' petition in so far as they show, or tend to show, any indebtedness on the part of George S. Denison, or either of these respondents, in manner and form as alleged.

They severally deny that the alleged bond sued on herein has been forfeited in the manner and form alleged; and they severally aver that the said Denison (or his estate) is entitled to other and further credits

29 on his account as collector of internal revenue than are allowed in the statements of account annexed to the petition herein, said statements showing an indebtedness on the part of said Denison to the plaintiff to the amount of four thousand and three hundred and forty-six dollars and eighty-four cents; whereas the fact is that the said Denison presented to the proper accounting officers of the Treasury Department of the United States for their examination divers and certain claims for credits against

the United States and in his favor, all of which in law and right should have been allowed to him in the adjustment of his accounts with the United States as collector of internal revenue; but that said claims for credits were disallowed by said accounting officers, as shown by the statements annexed to the petition, to the full amount of four thousand nine hundred and seventy-six dollars and seventy-four cents, as follows, on the credit claimed by said Denison on account of his compensation as collector, the sum of forty-one hundred and ninety-nine dollars and seventy-four
30 cents, and on a further credit claimed by him for money paid by him as said collector for necessary and legal advertising, for the sum of seven hundred and seventy-seven dollars.

And these defendants severally aver that the said Denison (or his estate) is entitled to these said specified credits now disallowed as aforesaid.

The premises considered, these defendants severally pray that the above specified credits be allowed; that this suit be dismissed as to them and for costs and general relief.

(Signed) J. Q. A. FELLOWS,
WM. R. WHITAKER,
Att'y.

Supplemental and amended answer.—Filed Dec'r 10th, 1878.

U. S. circuit court.

THE UNITED STATES *vs.* GEO. S. DENISON ET ALS. } No. 7927.

And now, again, into court come the defendant' herein, and under the reservations in their original answer, for further and supplemental answer to the petition of the plaintiff, say:

31 That the Treasury Department of the United States has disallowed and deducted from the claim of said Denison, declared after bill and ample vouchers had been furnished the Department, his commissions on thirty-six thousand one hundred and ninety-three $\frac{56}{100}$ dollars, this sum being the amount of drafts drawn by the Treasury Department of the United States upon the said Denison, and paid by him for the purpose of refunding taxes erroneously paid, which commissions amount to the sum of seven hundred and twenty-three $\frac{87}{100}$ dollars.

That the said Denison presented to the proper accounting officers of the Treasury Department of the United States for the examination divers and certain claims for credits against the United States and in his favor, all of which in law and right should have been allowed to him in the adjustment of his account with the United States as collector of internal revenue, and more especially as heretofore set forth in the original answer, and which is now reasserted and alleged in defence, and in addition thereto the above claim of $723.87, the commissions on said $36,193.56, the
32 amount of the drafts for refunding taxes erroneously paid as above set forth, and which claim for credit was also illegally and unjustly disallowed by the accounting officers of the Treasury Department of the United States, though proper vouchers and full proof was furnished of the correctness and legality of the same.

And respondents say further, severally, that the said Denison, or his estate, is entitled to the credits heretofore set forth in the original answer and disallowed as aforesaid.

Wherefore they pray leave to amend, and that this amended and supplemental answer be filed.

(Signed) J. Q. A. FELLOWS,
Att'y and in persona.

Let this supplemental and amended answer be filed.
December 10, 1879.
(Signed) EDWARD C. BILLINGS, *Judge.*

Hearing and verdict.—Extract from the minutes, April term, 1881.

NEW ORLEANS, *May 9th*, 1881.

33 Court met pursuant to adjournment. Present, Hon. E. C. Billings, district judge.

UNITED STATES
vs.
GEO. S. DENISON ET ALS. } No. 7927.

This cause came on for trial; A. H. Leonard, U. S. att'y, for pl'ffs; J. S. & W. R. Whitaker; J. Q. A. Fellows for the defendants; when the following named jurors were called and sworn, to try the issue joined herein:

1. G. Blache.
2. E. P. Pourpart.
3. Neville Smith.
4. J. A. Vignaud.
5. F. Meteyé.
6. Alfred Kilshaw.
7. R. Meyer.
8. D. R. Graham.
9. Joseph Marine.
10. A. Barnes.
11. C. H. Lee.
12. A. C. Landry.

And the jury being complete the court appointed D. R. Graham foreman thereof, and the trial was proceeded with, and after hearing the pleadings and evidence, and receiving a charge from the court, the cause was submitted to the jury, who retired to consider on their verdict.

34 After due deliberation they returned into court, and then and there, through their said foreman, rendered and delivered the following verdict, viz:

NEW ORLEANS, *May 9th*, 1881.

We, the jury, find a verdict in favor of the defendant.
D. R. GRAHAM, *Foreman.*

Whereupon it was ordered that the said verdict be recorded, and it is done accordingly.

Plaintiff's bill of exceptions.—Filed June 1st, 1881.

U. S. circuit court.

UNITED STATES
vs.
GEO. S. DENISON ET ALS. } No. 7927.

Be it remembered that on the trial of this cause, there being evidence tending to show that Geo. S. Denison was appointed collector of internal

revenue by commission bearing date March 4, 1863; that he took the oath of office and executed bond as such collector on the 15th day of May, 1863, and remained in office as such collector until the 11th day of Dec'r A. D. 1863, and that his accounts as such collector were adjusted by the
35 accounting officers of the Treasury Department of U. S. at various dates subsequent to June 3d, 1864; but in these adjustments the defendant Denison had not concurred, and the proper notice had been given to lay the foundation for the introduction of evidence as to the additional credits claimed before the jury by the defendants; evidence had been introduced tending to show that Denison entered upon the discharge of his official duty as collector of internal revenue for the district of Louisiana on the 11th March, 1863, and continued so to act as stated in the statement referred to until Dec'r 11th, 1863; that his accounts as such collector were regularly transmitted monthly during his whole term of office as above stated, and at the end thereof, and all prior to June 30th, 1864.

A. H. Leonard, U. S. att'y, counsel for pl'ff, asked the court to charge the jury that the amount of compensation and mode in which compensation should be given and allowed to Geo. S. Denison, as collector of int. revenue, is determined by sections 25 & 26 of act of June 30th,
36 1864, which instruction the court refused to give, but instead thereof gave the following: That the compensation and mode in which compensation was to be allowed to def't Denison as collector of internal revenue was to be determined by the statute in force at the time when his services for which compensation was claimed were rendered.

To which refusal, and also to which substituted instruction the attorney for the plaintiff duly excepted.

Be it further remembered that the attorney for the plaintiff duly excepted.

Be it further remembered that the attorney for the plaintiff further asked the court to instruct the jury that Geo. S. Denison is not entitled to any compensation as collector of internal revenue prior to 15' May, 1863, the date on which he gave bond and took oath of office, which instruction the court refused to give, but instead thereof gave the following instruction: That the Government could have properly refused to allow def't Denison to assume the office of collector of internal revenue until he had taken the oath of office and given the requisite bond, and that
37 for certain purposes he could not be an officer until he had taken the oath and given the bond, but that if the jury found that after he had received his commission, permitted him to discharge the duties of said officer, and accepted of his monies therein prior to the time of his taking said oath, and giving his official bond, nevertheless he was entitled to compensation from the time when he commenced to discharge his official duties, and his services in his said office were accepted by the Government, that it being admitted that defendant Denison had collected the sum of $577,791.28, he was entitled to compensation at the rate of $833.33⅓ per month during the time he held the office of collector of internal revenue, counting from the time when, after receiving his commission, he was permitted by the Government to discharge the duties of such officer, and his services were accepted therein, although during a portion of such time he had not taken his official oath, nor given his official bond.

To which refusal to give the instruction requested, and to the
38 substituted instruction so given *is* stated therein, and each part of the same, the attorney for the plaintiff duly excepted.

Be it further remembered that at said trial the attorney of the plaintiff requested the court to instruct the jury as follows:

That during the time Denison was collector of internal revenue the law did not provide for reimbursement to collector' of internal revenue of any amount by them expended for advertisements, and there being no proof that the Secretary of the Treasury had *never* any allowance to Denison for amounts by him expended for advertisement, nothing can be allowed def'ts for advertising; which instruction the court refused to give, but instead thereof instructed the jury that if, in accordance with the terms of the statute, defendant Denison was required as collector of internal revenue to make, and did make in certain newspapers, certain advertisements for which he was required to pay, and did pay, and if also the jury found that the amounts so paid were reasonable and proper am'ts, he was entitled to a credit for the amounts so paid by him, although the
39 Secretary of the Treasury had made no allowance to him therefor.

That these credits were independent of the commission to which the defendant Denison was entitled as a compensation for his services.

To which refusal to give the instruction, & to the substituted instruction given in place thereof and to last part of the same, att'y for the pl'ff duly excepted, and since then matters do not appear of record, the attorney of the plaintiff has presented this his bill of exceptions, and prays that it may be allowed and signed; which is done accordingly.

(Signed) EDWARD C. BILLINGS, *Judge*.

Plaintiff's bill of exception to reception of testimony.—Filed June 1st, 1881.

Circuit court.

UNITED STATES
vs. } No. 7927.
GEO. S. DENISON ET AL.

Be it remembered that on trial of this cause defendants proposed to prove by testimony of W. R. Whitaker that defendant rendered
40 services as collector of internal revenue prior to the 15th day of May, A. D. 1863, by collecting taxes and acting generally as such collector.

To which evidence A. H. Leonard, U. S. att'y, counsel for pl'ff, objected, on the grounds:

1st. That under provisions of law no one could be a collector of internal revenue before giving the bond and taking the oath required by law.

2d. That if said Denison did act as collector of internal revenue, collect taxes, &c., there must other and better evidence than the testimony of said witness, viz, the records of the Treasury Department of the U. S.; the witness Whitaker having previously proved that he was a chief deputy collector of defendant Denison during the latter's whole term of office as collector of internal revenue, and that all the written or other evidence claimed to be better evidence by the U. S. attorney was made by him as such chief deputy, or under his instruction and immediate supervision, and

that if such written evidence could be produced it could be used
41 only, if objected to, to refresh the memory of the witness or corroborate his testimony.

Which objections were overruled by the court and said testimony received.

To which ruling pl'ffs except and tender this bill of exceptions, and ask that it be signed and made of record.

(Signed) EDWARD C. BILLINGS, *Judge.*

Judgment—Extract from judgment book, April term, 1881.

NEW ORLEANS, *Monday, May 9th,* 1881.

Court met pursuant to adjournment.

Present, Hon. Edward C. Billings, district judge.

UNITED STATES
vs. } No. 7927.
GEO. S. DENISON ET ALS.

By reason of the verdict of the jury herein, and in accordance therewith, it is ordered, adjudged, and decreed that there be judgment in favor of the defendants, George S. Denison, Thomas Coltman, Benjamin
42 F. Flanders, John S. Whitaker, John Q. A. Fellows, Elize E. Malhiot, and William H. Higgins, and against the demand of the United States.

Judgment rendered May 9th, 1881.

Judgment signed June 7th, 1881.

(Signed) EDWARD C. BILLINGS, *Judge.*

Motion and order for writ of error.—Entered and filed June 16th, 1881.

UNITED STATES
vs. } No. 7927.
GEO. S. DENISON ET ALS.

On motion of A. H. Leonard, attorney of the United States for said district, and on representing to the court that the plaintiffs, the United States, is aggrieved by the final judgment herein rendered against them on the 7th day of June, A. D. 1881, and is advised there is error therein to their prejudice, and desires that a writ of error, to operate as a supersedeas, be granted them therefrom; and on further suggestion that said writ of error is applied for under and in accordance with di-
43 rections from the Treasury Department of the United States:

It is ordered that a writ of error, to operate as a supersedeas, be allowed as prayed for, without bond, under provisions section 1001 Revised Statutes of the United States, and be made returnable to the next October term of the Supreme Court of the United States.

44 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE:

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the

foregoing 43 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had on the trial of the case of the United States vs. Benjamin F. Flanders et al. No. 7927 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 8th day of August, A. D. 1881.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, Edward C. Billings, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 8th day of August, A. D. 1881.

EDWARD C. BILLINGS, *Judge.*

45 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit and holding sessions for the eastern district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between the United States and Benjamin F. Flanders, John S. Whitaker, and John Q. A. Fellows (in the suit entitled "United States vs. George S. Denison et al.,") a manifest error hath happened, to the great damage of the said United States, as by their complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 16th day of June, in the year of our Lord one thousand eight hundred and eighty-one.

[SEAL.] F. A. WOOLFLEY,
Clerk of the United States Circuit Court
for the District of Louisiana.

(Indorsed:) United States circuit court. No. 7927. United States, plaintiffs in error, versus Benjamin F. Flanders et al., defendants in error. Writ of error. Filed June 16th, 1881. T. V. Coupland, d'y clerk.

46 THE UNITED STATES OF AMERICA:

Circuit court of the United States, eastern district of Louisiana.

The President of the United States to Benjamin F. Flanders, John S. Whitaker, and John Q. A. Fellows, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the second Monday of October next, pursuant to a motion and order for a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein the United States are plaintiffs in error and you and each of you are defendants in error, to show cause, if any there be, why the judgment rendered against the said United States, as in said motion and order for a writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 16th day of July, in the year of our Lord one thousand eight hundred and eighty-one.

EDWARD C. BILLINGS, *Judge.*

47 (Indorsed:) United States circuit court. No. 7927. United States, plaintiffs in error, vs. Benjamin F. Flanders et al., defendants in error. Citation.

Marshal's return.

Received Jul. 22, 1881, by the U. S. marshal, and on July 22d, 1881, I served a true copy of the within writ of error on Wm. R. Whitaker, and on July 25th, 1881, I served a copy of the within writ of error on John Q. A. Fellows, esq., the aforesaid Wm. R. Whitaker & John Q. A. Fellows being the attorneys of record for the within named Benjamin F. Flanders, John S. Whitaker, & J. O. A. Fellows, defendants in error. Said service was made by handing to each a copy thereof in person, in the city of New Orleans, the said Wm. R. Whitaker & J. O. A. Fellows accepting service of the same for said def'ts in error.

E. S. CURRY,
D'y U. S. Marshal for East. Dist. of La.

Personally appeared before me E. S. Curry, a lawful deputy of Jack Wharton, U. S. marshal for the eastern district of Louisiana, and make oath that he served true copies of the within writ of error on the def'dts in error herein named as set forth in his official return herein.

E. S. CURRY,
D'y U. S. Marshal for Eastern D's't of La.

Subscribed and sworn before me August 1st, 1881.

T. V. COUPLAND,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

(Indorsement on cover:) No. 307. The United States, plaintiff in error, vs. Benjamin F. Flanders, John S. Whitaker, and John Q. A. Fellows. E. Louisiana, C. C. U. S. Filed 24 September, 1881.

112-86

Office Supreme Court U. S.
FILED
OCT 14 1884
JAMES H. McKENNEY,
CLERK

In the Supreme Court of the United States.

OCTOBER TERM, 1884.

THE UNITED STATES, PLAINTIFF in error,
vs.
BENJAMIN F. FLANDERS, JOHN S. Whitaker, and John Q. A. Fellows.
No. 28.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1884.

THE UNITED STATES, PLAINTIFF in error,
vs.
BENJAMIN F. FLANDERS, JOHN S. Whitaker, and John Q. A. Fellows. } No. 28.

BRIEF FOR THE UNITED STATES.

This is an action on the bond of George S. Dennison, collector of internal revenue for the first collection district of Louisiana.

The case was tried before a jury and resulted in a verdict for the defendants. (R., p. 16.)

On the trial the court gave several instructions to the jury to which the plaintiff excepted. (R., pp. 16–18.)

It appears that Denison entered on his duties as collector on the 11th March, 1863, and continued in office until the 11th December, 1863, and that his accounts were reg-

ularly transmitted for settlement, monthly, during his whole term of office and at the end thereof, and all prior to 30th June, 1864.

The district attorney asked the court to instruct the jury that Dennison's compensation must be determined by sections 25 and 26 of the act June 30, 1864 (13 Stat., 231–2); but the court, refusing to do so, instructed the jury that the collector's compensation was to be determined by the law in force when the services were rendered.

The court was asked by the counsel for the plaintiff to instruct the jury that the collector was not entitled to compensation for any time prior to 15th May, 1863, but the court instructed the jury that he was entitled to compensation from the 11th March, 1863, the day he entered upon his office, albeit he did not qualify by taking the oath and giving the bond until the 15th May, 1863.

Among the allowances claimed by the collector was one to reimburse him for certain expenses in the way of advertising, for which the plaintiff insisted there could be no credit without showing that the Secretary of the Treasury had authorized the expenditure, but the court instructed the jury that if the advertising in question was required to be done and the amount claimed therefor was reasonable it should be allowed, regardless of the action of the Secretary of the Treasury.

ASSIGNMENT OF ERRORS.

It is submitted that there is error in the judgment in this:

That the court instructed the jury that the collector

was entitled to recover compensation for the time before he qualified according to law.

2. In that the court left it to the jury to determine whether the advertising for which credit was claimed was such as the collector was required to make.

ARGUMENT.

No error has been assigned on the exception to the first instruction, because it is difficult to see how the law changing the compensation of collectors (act 30th June, 1864), which was not passed until after Dennison's services were rendered, can be made to have a retrospective operation in the absence of an explicit enunciation by Congress of such an intention.

It would seem that the court was in error in instructing the jury that if Dennison was permitted to become an officer *de facto* for several months before he qualified according to law, he could recover compensation for that period.

But who has the right to exercise a dispensing power over the law requiring the oath and the bond? It seems to be a doctrine fraught with great danger to the Treasury that any member of the Executive Department can bind the Government to compensate an officer for services peformed before having been legally inducted into office. It would seem to be nothing more nor less than placing a premium on delay in qualifying according to law, and, in that way, subjecting the public money to risks which were not within the contemplation of Congress. In the eye of the law Dennison was no collector prior to the 15th May, 1863.

It would seem to have been error to leave it to the jury to determine whether the advertising for which credit was claimed was such as the collector was required to make, thus submitting to the jury a question of law.

It is submitted the judgment must be reversed.

WM. A. MAURY,
Assistant Attorney-General.

112-86

United States Supreme Court.

OCTOBER TERM, 1884.

No. 28.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

BENJAMIN F. FLANDERS, ET ALS.

Brief of Defendants.

I.

STATEMENT OF CASE.

Plaintiff claims $4346 84—with 6% interest from 11th Dec. 1863—as a deficiency in the account of George S. Denison, Collector of Internal Revenue in Louisiana, on his bond as such and against his sureties on his bond.

Rec. pp. 1 and 2.

To the petition was annexed; the bond. (Rec. pp. 2 to 5.)

Exhibit A.; statement of account dated 24th April, 1865, showing a balance against Denison of $126,963.71. (Rec. pp. 6 and 7.)

A supplemental report dated 17th Dec. 1870, reducing the balance claimed to $5,828.69. (Rec. p. 8.)

And a third report—supplemental for suit, dated 17th June, 1876, reducing the balance still further to $4,316.84, the amount sued for. (Rec. p. 9.)

The difference—that is, the result of the claims disallowed by the Treasury Department, are as follows:

Denison claims under Act of Congress, 1st July, 1862, section 34, p. 445—12 Statutes at large—and the proof administered, that he was entitled to $7500 salary—being three-fourths of the year from 11th March, 1863, when he entered upon the discharge of his duties as Collector of Internal Revenue, to 11th December, 1863, when his official career terminated. The Adjuster of Accounts, disallowed this claim and computed Collector Denison's commission under Section 26 of Act 30th June, 1864—13 Stat. at large p. 232, allowing by that rule of computation $3300.26—thereby disallowing, of the $7500 the sum of $4199.74. (Rec. p. 10.)

The Treasury Department also, with other smaller items—disallowed a claim for "amount of bills for advertising, for the reason that law did not provide for the payment of this expense prior to April 1st, 1865, say $777.00.

(Rec. p. 11, top.)

The total of which *two disallowed claims* $4976.74 exceeds the amount sued for by $629.90, which amount, it is contended, the government owes the estate of Denison, now deceased.

The claim for these two disallowed items was duly made, and claimed as a defence by the sureties of Denison in their answer.

II.

The case comes up on two bills of exception, taken by the District Attorney.

I.—To the testimony of W. R. Whitaker, that defendant (Denison) rendered services as Collector of Internal Revenue prior to the 15th day of May A. D., 1863 (that is from 11th March, 1863,) by collecting taxes and acting generally as such collector;" Denison receiving his commission dated 4th March, 1863 on that day (11th March, 1863.) 1st. That under the provisions of law, no one could be a Collector of Internal Revenue, before giving the bond and taking the oath required by law. 2nd. That if said Denison did act as Collector of Internal Revenue, collect taxes, etc,—there must be other and better evidence than the testimony of the witness Whitaker, viz. the records of the Treasury Department of the U. S." (Rec. p. 18.)

II.—To the charge of the Court:

1st. That though there was evidence tending to show that Denison was appointed Collector of Internal Revenue, on 4th March, 1863. that he entered upon the discharge of his duties as Collector on the 11th March, 1863, that he took the oath and executed the bond on the 15th May,

by them expended for advertisements, and there being no proof that the Secretary of the Treasury had ever made any allowance to Denison for amounts by him expended for advertisements, nothing can be allowed defendants for advertising; and to the charge in lieu thereof, that if in accordance with the terms of the Statute, defendant Denison was required as Collector of Internal Revenue to make and did make in certain newspapers, certain advertisements for which he was required to pay and did pay, and if also the jury found that the amounts so paid were reasonable and proper amounts, he was entitled to credit for the amounts so paid by him, although the Secretary of the Treasury had made no allowance to him therefor; that these credits were independent of the commissions to which the defendant Denison was entitled as a compensation for his services (Rec. pp. 17 and 18.)

In accordrnce with these instructions and the evidence, the jury found for the defendants, and on these bills of exception, the United States sued out this writ of error.

POINTS AND AUTHORITIES.

I.

As to the Adminibility of the Parol Testimony.

The foundation for this was laid by showing that the witness was the "chief deputy collector of de-

fendant Denison during the latter's whole term of office, as Collector of Internal Revenue, and that all the written or other evidence claimed to be better evidence by the U. S. Attorney, was made by him as such chief deputy, or under his instruction and immediate supervision, and that if such written evidence could be produced it could be used only, if objected to, to refresh the memory of the witness or corroborate his testimony." (Rec. pp. 18 and 19.)

We may add, that the Records of the Internal Revenue office were under the control of the government and could have been produced, by the government, and would have been, could they have contradicted or varied the testimony of witness.

The Parol Testimony was therefore admissible.

1 Greenleaf, Sect. 82, and authorities note 2.
Minor vs Tillotson, 7 Pet. 101.
1 Greenleaf, Sect. 84 and note 2.
ibid Sects. 90, 93.

The other (1st) objection to the testimony of the witness is also made in the bills to the charge of the Court.

II.

As to the Compensation and mode in which Compensation should be given and allowed.

The law in force during the whole time Denison was in office (March 11th to Dec. 11th, 1863,) was the law of 1862.

12 Stat. at large Sect. 34 p. 445.

Whatever compensation was due him at the expiration of his term of office (11th Dec. 1863.) was fixed and could not be diminished, by the subsequent legislation of 1864—as found in 13 Stat. at large. Sects. 25 and 26, p. 232.

His accounts had been presented and should have been passed upon prior to the date of the Statute of June 30th, 1864. Had the officials done their duty, they would have allowed the $7500.00 compensation before the Statute became a law. Can their neglect, change the fixed rights of the officer and render his sureties liable?

United States vs Heth, 3 Cranch 408, 412, 414.

20 per cent. cases, 20 Wallace, 187 and note.

Potters Dwarris, 162, et seq. and notes.

III.

As to Compensation of the Officer, acting after the Receipt of the Commission and before taking oath and giving bond, from 11th March to 15th May, 1363.

The government required him to act, had his services, received monies from him—without demur. The government accepted his services, as Collector of Internal Revenue without bond, found them faithfully performed, and they were very arduous in inaugurating the system of Internal Revenue Collections. Compensation should be allowed for the time he served.

Brightly's Federal Digest, p. 599. Nos. 124, 126.
Robb vs United States, 19 Law Rep. 89.
Boyle vs " " ibid, 622.
McIntosh vs " " 20 Law Rep. 633.
United States vs Dickson, 15 Pet. 141, 165.

IV.

As to the allowance of claim of $777, for amount expended for Advertisements.

The law required the Collector to incur these expenses—the jury found he did make them under the Statute, which he paid, and that the amounts were reasonable and proper. A neglect on the part of the Secretary of the Treasury, to allow for expenses incurred under the Statute and his instructions should not warrant a loss to the officer.

12 Stat. at large, Sec. 19, p. 439.
Andrews vs United States, 2 Story C. C. Rep. 202.

Besides Congress subsequently (in 1865) made this allowance obligatory.

13 Statutes at large Sec. 48, p. 239.

ARGUMENT.

The real question, as council contends, is, what was the true, actual difference in the account between

the government and the collector, on his *ceasing* to be such, 11th December, 1863. As the law then stood, the collector, having served nine (9) months and having during that time collected and turned into the Treasury as Collector of Internal Revenue, a sufficient amount, to warrant the maximum salary of $10,000—he was then entitled to $7500.

As in the Dickson case, 15 Pet., 165, "he seeks only the maximum commissions upon the monies actually received by him during his continuance in office." His commission amounted to more than $10,000—but that being the maximum, he claimed not the full $10,000—but only $7500, for the nine months he served. There can be no question, that had the accounting officers of the Treasury Department adjusted the account prior to 30th June, 1864—they would have allowed that amount. Can then the enactment of a subsequent rule fixing compensation, be evoked which shall add to or create a liability which did not exist, and *a fortiori*, involve the securities of the officer, in law?

Again, the law required the collector to give certain public notices in the newspapers of the inauguration of the internal revenue system of taxation, (the defendant Denison was the first collector under the law in Louisiana) and the Secretary of the Treasury was authorized to allow the payment of the same. The first statement of the adjustment of accounts was made 24th April, 1865, (Rec. pp. 6 and 7) and in this and the subsequent statements of 1870 and

1876; this item of $777.00 was disallowed, on the pretense that the law in existence in 1863, had not appropriated the money to pay it—not because it had not been necessarily expended, though the law of 1864, in force at the time of the several adjustments made such allowance obligatory.

It is respectfully submitted that the ruling and charges of the Circuit Judge were correct, and the bills of exception thereto were not well taken.

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